

§ 1955.63

method to be followed which will comply with applicable State laws.

[53 FR 35765, Sept. 14, 1988, as amended at 68 FR 61332, Oct. 28, 2003]

§ 1955.63 Suitability determination.

As soon as real property is acquired, a determination must be made as to whether or not the property can be used for program purposes. The suitability determination will be recorded in the running record of the case file.

(a) *Determination.* The Agency will classify property that secured loans or was acquired under the CONACT as “suitable property” or “surplus property” in accordance with the definitions found in § 1955.53.

(b) *Grouping and subdividing farm properties.* To the maximum extent practicable, the Agency will maximize the opportunity for beginning farmers and ranchers to purchase inventory properties. Farm properties may be subdivided or grouped according to § 1955.140, as feasible, to carry out the objectives of the applicable loan program. Properties may also be subdivided to facilitate the granting or selling of a conservation easement or the fee title transfer of portions of a property for conservation purposes. The environmental effects of such actions will be considered pursuant to subpart G of part 1940 of this chapter.

(c) *Housing property.* Property which secured housing loans will be classified as “program” or “nonprogram (NP).” After a determination of whether the property is suited for retention in the respective program, the repair policy outlined in § 1955.64(a) of this subpart will be followed. In determining whether a property is suited for retention in the program, items such as size, design, possible health and/or safety hazards and obsolescence due to functional, economic, or locational conditions must carefully be considered. Generally, program property will meet, or can be realistically repaired to meet, the standards for existing housing outlined in Subpart A of Part 1944 of this chapter provided the property is typical of modest homes in the area. The cost of repairs will generally not be considered in determining suitability. Since houses, sites and locations vary widely throughout the country, discre-

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tion and sound judgment must be used in determining suitability. The majority of houses RHS acquires will be suited for retention and classified as program property. In some instances, property will not be suited for retention in the program and will be classified as “nonprogram (NP)” property. Situations of this type include, but are not limited to:

(1) A dwelling which has been enlarged or improved to the point where it is clearly above modest.

(2) When a determination is made that the property should not have been financed originally.

(3) A dwelling brought into the program as an existing dwelling which met program standards at the time it was originally financed by the Agency but which does not conform to current policies. This includes older and/or larger houses of a type which have proven to create excessive energy and/or maintenance costs to very-low and low-income borrowers.

(4) A dwelling which is obsolete due to location, design, construction or age.

(5) A dwelling which requires major redesign/renovation to be brought to program standards.

(d) [Reserved]

[53 FR 35765, Sept. 14, 1988, as amended at 54 FR 20522, May 12, 1989; 58 FR 58648, Nov. 3, 1993; 60 FR 34455, July 3, 1995; 60 FR 55147, Oct. 27, 1995; 62 FR 44396, Aug. 21, 1997; 68 FR 7700, Feb. 18, 2003]

§ 1955.64 [Reserved]

§ 1955.65 Management of inventory and/or custodial real property.

(a) *Authority*—(1) *County Supervisor.* The County Supervisor, with the assistance of the District Director and State Office program staff as necessary, will select the management method(s) used for property which secures (or secured) loans to individuals as defined in this subpart.

(2) *State Director.* The State Director will select the management method to be used for property which secures (or secured) loans to organizations as defined in this subpart. The State Director shall also provide guidance and assistance to County Supervisors and

District Directors as necessary to insure that property under their jurisdiction is effectively managed.

(b) *Management methods.* Management methods and requirements will vary depending on such things as the number of properties involved, their density of location, and market conditions. Management tools which may be used effectively range from contracts to secure individual property, have the grass cut, or winterize a dwelling; a simple management contract to provide maintenance and other services on a group of properties (including but not limited to specification writing, inspection of repairs, and yard and directional signs and their installation), or manage an MFH project; blanket-purchase arrangement contracts to obtain services for more than one property; to a broad-scope management contract with a real estate broker or management agent which may include inspection and specification-writing services, making simple repairs, obtaining lessees, collecting rents, coordination with listing brokers in marketing the properties and effecting eviction of tenants when necessary. A contractor may handle evictions only where State laws permit the contractor to do so in his/her own name; a contractor may not pursue eviction in the name of the Government (FmHA or its successor agency under Public Law 103-354). Custodial property may be managed in the same manner as inventory property except that it may be leased only if it is habitable without repairs in excess of those authorized in §1955.55(c) of this subpart. Farm or organization property, such as rental housing and community facilities, may be operated under a management contract if the State Director has determined it is appropriate to have the property in operation. In any case, the primary consideration in selecting the method of management to be used is to protect the Government's interest. If property to be operated or leased under a management contract is located in an area identified by the Federal Insurance Administration as a special flood or mudslide hazard area, lessees or tenants must be notified to that effect in accordance with §1955.66(e) of this subpart. A management contract which

covers property in such a hazard area may provide for the contractor to issue the required notices.

(c) *Obtaining services for management and/or operation of properties.* Services for management, repair, and/or operation of properties will be obtained by contract in accordance with FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 office).

(1) *Management contracts.* Management contracts are flexible instruments which may be tailored to meet the specific needs of almost any situation involving custodial or inventory property. This type of contract may be used to manage and maintain SFH properties, farms, and any other type of facility for which FmHA or its successor agency under Public Law 103-354 is responsible. Organization-type properties will be secured, maintained, repaired, and operated if authorized, in accordance with a management plan prepared by the District Director and approved by the State Director if the amount of total debt does not exceed the State Director's loan approval authority, or by the Administrator. For MFH, this plan should follow the guidance provided by Subpart C of Part 1930 of this chapter. An audit of the borrower's records may be required if recent financial information is not available. For MFH projects, tenant occupancy and selection will be in accordance with the occupancy standards set forth in Subpart C of Part 1930 of this chapter. Tenants will be required to sign a written lease if one does not exist when the property is acquired or taken into custody. If a contract involves management of an MFH project with 5 or more units, or 5 or more single-family dwellings located in the same subdivision, the contractor must furnish Form HUD 935.2, "Affirmative Fair Housing Marketing Plan," subject to FmHA or its successor agency under Public Law 103-354's approval. Contracts for management of farm inventory property will be offered on a competitive bid basis, giving preference to persons who live in, and own and operate qualified small businesses in the area where the property is located in accordance with the provisions in

FmHA or its successor agency under Public Law 103-354 Instruction 2024-Q (available in any FmHA or its successor agency under Public Law 103-354 office).

(2) *Authority to enter into management contracts.* (i) The County Supervisor may enter into a management contract for basic services involving farms or not more than 25 single-family dwellings; however, the aggregate amount paid under a contract may not exceed the contracting authority limitation for County Supervisors outlined in FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 office).

(ii) A District Director may enter into a management contract for basic maintenance and management services for an MFH project within the contracting authority outlined in FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 office). The aggregate amount of any contract may not exceed that contracting authority.

(iii) A CO in the State Office may enter into a management contract for basic services involving more than 25 single-family dwellings, a more complex management contract for SFH property, or an appropriate contract for management or operation of farm or organization-type property. The aggregate amount paid under a contract may not exceed the contracting authority limitation for State Office staff outlined in FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 office).

(iv) If a proposed management contract will exceed the contracting authority for State Office staff within a short time, a request for contract action will be forwarded to the Administrator, to the attention of the appropriate program division.

(3) *Specification of services.* All management contracts will provide for termination by either the contractor or the Government upon 30 days written notice. Contracts providing for man-

agement of multiple properties will also provide for properties to be added or removed from the contractor's assignment whenever necessary, such as when a property is acquired or taken into custody during the period of a contract or when a property is sold from inventory. If a contractor prepares repair specifications, that contractor will be excluded from the solicitation for making the repairs to avoid a conflict of interest. If a management contract calls for specification writing services, a clause must be inserted in the contract prohibiting the preparer of his/her associates from doing the repair work. Examples of both basic and more complex management contracts are included in Exhibit A to FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 office).

(4) *Costs.* Costs incurred with the management of property will be paid according to FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 office). For management of custodial property, costs will be charged to the borrower's account as recoverable; and for management of inventory property as nonrecoverable. Except for management fees, costs of managing MFH inventory property when tenants are still in residence will be paid to the extent possible with rental income. Management fees will be paid to the manager in accordance with FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 Office).

(d) *Additional management services.* Additional types of management services and supplies for which the State Director may authorize acquisition include: Appraisal services (except for MFH), security services, newspaper copy preparation services, market data and comparable list acquisition, and tax data acquisition. If the State Director believes there is a need to acquire other services not listed in this paragraph or authorized elsewhere in this subpart, the State Director should

make a written request to the Assistant Administrator (appropriate program) for consideration and/or authorization.

[53 FR 35765, Sept. 14, 1988, as amended at 57 FR 36591, Aug. 14, 1992]

EFFECTIVE DATE NOTE: At 69 FR 69106, Nov. 26, 2004, §1955.65 was amended in paragraph (c)(1) by removing the fourth sentence and by revising the sixth sentence, effective Feb. 24, 2005. For the convenience of the user, the revised text is set forth as follows:

§ 1955.65 Management of inventory and/or custodial real property.

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(c) * * *

(1) * * * For MFH projects, tenant occupancy and selection will be in accordance with the occupancy standards set forth in 7 CFR part 3560, subpart D. * * *

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§ 1955.66 Lease of real property.

When inventory real property, except for FSA and MFH properties, cannot be sold promptly, or when custodial property is subject to lengthy liquidation proceedings, leasing may be used as a management tool when it is clearly in the best interest of the Government. Leasing will not be used as a means of deferring other actions which should be taken, such as liquidation of loans in abandonment cases or repair and sale of inventory property. Leases will provide for cancellation by the lessee or the Agency on 30-day written notice unless Special Stipulations in an individual lease for good reason provide otherwise. If extensive repairs are needed to render a custodial property suitable for occupancy, this will preclude its being leased since repairs must be limited to those essential to prevent further deterioration of the security in accordance with §1955.55(c) of this subpart. The requirements of subpart G of part 1940 of this chapter will be met for all leases.

(a) *Authority to approve lease of property*—(1) *Custodial property*. Custodial property may be leased pending foreclosure with the servicing official approving the lease on behalf of the Agency.

(2) *Inventory property*. Inventory property may be leased under the following conditions. Except for farm property proposed for a lease under the Homestead Protection Program, any property that is listed or eligible for listing on the National Register of Historic Places may be leased only after the servicing official and the State Historic Preservation Officer determine that the lease will adequately ensure the property's condition and historic character.

(i) *SFH*. SFH inventory will generally not be leased; however, if unusual circumstances indicate leasing may be prudent, the county official is authorized to approve the lease.

(ii) *MFH*. MFH projects will generally not be leased, although individual living units may be leased under a management agreement. After the property is placed under a management contract, the contractor will be responsible for leasing the individual units in accordance with subpart C of part 1930 of this chapter. In cases where an acceptable management contract cannot be obtained, the District Director may execute individual leases.

(iii) *Farm property*. (A) Any property which secures an insured loan made under the CONACT and which contains a dwelling (whether located on or off the farm) that is possessed and occupied as a principal residence by a prior owner who was personally liable for a Farm Credit Programs loan must first be considered for Homestead Protection in accordance with subpart S of part 1951 of this chapter.

(B) Other than for Homestead Protection and except as provided in paragraph (c), the county official may only approve the lease of farm property to a beginning farmer or rancher who was selected through the random selection process to purchase the property but is not able to complete the purchase due to the lack of Agency funding.

(C) When the servicing official determines it is impossible to sell farm property after advertising the property for sale and negotiating with interested parties in accordance with §1955.107 of subpart C of this part, farm property may be leased, upon the approval of the Administrator, on a case-by-case basis. This authority cannot be